CF0000063185

(2)

समक्ष मध्य प्रदेश उच्च न्यायालय, जबलपुर

Division Bench (Criminal)

फौजदारी अपील क्रं. 297 सन् 2000

(217)

29/11/2000
B.S. Sahu

अपीलार्थी :- उत्तम कुमार आत्मज दौवा राम पैकरा (कंवर)
(जेल में) उम्र करीब 23 वर्ष निवासी - सलौनी,
थाना - बसडोल, जिला - रायपुर (म0प्र0)

विरुद्ध

अनावेदक :- मध्य प्रदेश शासन

फौजदारी अपील अन्तर्गत धारा 374(2) दंड प्रक्रिया संहिता 1973

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.297/2000

Uttam Kumar

Vs.

State of Madhya Pradesh (now Chhattisgarh)

Judgment for Consideration

Sd/-
Dilip Raosaheb
Deshmukh
Judge

Hon'ble Shri Justice Dhirendra Mishra

I agree

Sd/-

03-08-2006

Post for: 04-08-2006

Sd/-

(49)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 297/2000

Uttam Kumar

Vs.

State of Madhya Pradesh (Now State of Chhattisgarh)

Coram :- HON'BLE SHRI JUSTICE **DHIRENDRA MISHRA** &

HON'BLE SHRI JUSTICE DILIP RAOSAHEB DESHMUKH, JJ.

Present :- **Shri P.K.C.Tiwari, Senior Advocate with Shri Avinash K. Mishra, learned Counsel for the appellant.**

Shri U.N.S.Deo,Govt.Advocate for the State.

(The following Judgment is delivered on 04-08-2006)

Per Dilip Raosaheb Deshmukh, J.

1. This appeal is directed against the judgment dated 19-08-1999 delivered by Smt. Anuradha Khare, Ist Additional Sessions Judge, Baloda Bazar, District-Raipur in Sessions Trial Number-317/1998 whereby the appellant was convicted under Section-302 of IPC and was sentenced to undergo rigorous imprisonment for life and also to pay a fine of Rs.5,000/- and in default of payment of fine to undergo additional rigorous imprisonment for 5 months.

2. It is not disputed that the deceased Meena Bai was the wife of the appellant. Sulesan Bai PW-7 is the sister-in-law and Darhin Bai PW-9 is the step mother of the appellant. Homicidal death of Meena Bai on 05-07-1998 in the *Parchi* of her matrimonial home at Village-Saloni is also not disputed by the learned counsel for the appellant in this appeal.

3. Briefly stated the prosecution story is that prior to the occurrence the appellant had driven out Meena Bai from the matrimonial home and during this period while she was living in her maternal home she had given birth to a child. The appellant doubted the character of Meena Bai. On 05-07-1998 at about 12 Noon, the appellant caused the death of Meena Bai in the *Parchi* of his house by assaulting her repeatedly on the head by means of a Tangia. Sulesan Bai PW-7 who was preparing meals, heard cries of Meena Bai and came to the *Parchi*. She saw that Meena Bai was lying on the floor in a pool of blood and the appellant was standing near her with tangia in his hand. Sulesan Bai PW-7 informed her mother-in-law Derhin Bai PW-9. Derhin Bai PW-9 saw the appellant leaving the house with the tangia in his hand. On being asked, he told her that he was going to Police Station-Kasdol. She tried to stop the appellant but he threatened to assault her by the tangia and went away. On returning from the field Dauwa Ram PW-10 saw that Sulesan Bai PW-7 and Derhin Bai PW-9 were crying in front of the house. Some villagers had also assembled there. He saw the dead body of Meena Bai lying in a pool of blood. Sahas Ram PW-15 also came to the place of occurrence and saw the dead body of Meena Bai lying in a pool of blood in the *Parchi* with injuries on her head. Derhin Bai PW-9 told

him that the appellant had caused the death of Meena Bai by assaulting her with a tangia.

4. Sahas Ram PW-15 lodged F.I.R. Ex.P-13 at P.S. Kasdol, situated 24 K.M. west on the same day at 06.10 P.M. Merg intimation was also registered vide Ex.P-14 at about the same time. Memorandum of the appellant was recorded on 06-07-1998 vide Ex.P-17 by Sub Inspector Ratnesh Mishra PW-20 in which the appellant stated to have concealed the tangia in the bushes near the petrol pump in Kasdol. On such memorandum tangia with blood like stains was recovered from the bushes near the petrol pump in Kasdol vide Ex.P-18. Plain soil and blood stained soil were seized from the place of occurrence on the same day vide Ex.P-19 and one old Herculis Cycle was also seized on the same day Vide Ex.P-20. Autopsy on the dead body of Meena Bai was conducted by Dr. K.L.Banjare on 06-07-1998 and following injuries were found on her person:

1. Contusion over forehead at mid site measuring 1"x1' colour - bluish.
2. Incised wound behind the right ear measuring 2"x1/2"x1/2" blood clots present.
3. Incised wound on right tempero-parietal region 2"x 1/2" x 2 1/2". Blood clots and Brain matter present.
4. Lacerated wound on occipital region left side measuring 2" x 2" x 1 ½ ". Blood clots and Brain matter present.

Internal examination revealed a fracture of right parietal bone, fracture of right temporal bone and fracture of left occipital bone. Depressed brain substances were protruding from all fracture sites. It was opined that the injuries were ante mortem and death was due to shock as a result of excessive hemorrhage from head

injury and was homicidal in nature. Plain soil and blood stained soil and the tangia along with the blood stained clothes of the deceased were sent for chemical analysis to the Forensic Science Laboratory. Excepting plain soil, presence of blood was confirmed on all the abovementioned articles. After completion of investigation, the appellant was prosecuted under Section-302 of the IPC.

5. The appellant abjured the guilt and led no evidence in his defence. The prosecution examined as many as 20 witnesses. Relying upon the evidence led by the prosecution learned trial Judge convicted and sentenced the appellant as aforesaid in para-1. (Supra)

6. Shri P.K.C.Tiwari, learned Senior Advocate appearing on behalf of the appellant while assailing the impugned judgment placed reliance on ***Ashish Batham Vs. State of Madhya Pradesh*** reported in **AIR-2002-Supreme Court-3206** while arguing that suspicion howsoever strong could not be substitute for legal proof and graver the charge, greater has to be the standard of proof. It was argued that the testimony of Sulesan Bai PW-7, Derhin Bai PW-9 and Sahas Ram PW-15 stood wholly rebutted by the cross examination and could not form the basis for convicting the appellant under Section-302 of the IPC. Reliance was also placed on ***Rajkumar Vs. State of Madhya Pradesh*** reported in **2004 AIR S.C.W.-5137** while contending that appellant could not be convicted on the basis of circumstantial evidence since the report of Forensic Science Laboratory did not establish the presence of human blood on the tangia alleged to have been recovered from the appellant and motive for the appellant to commit murder of his wife had also not been established. On the other hand, Shri U.N.S.Deo, learned Govt.

Advocate appearing for the State argued in support of the impugned judgment.

7. Having heard rival contentions, we have perused the record of Sessions Trial Number-317/1998. Homicidal death of Meena Bai is not disputed in this appeal. Even otherwise the autopsy report Ex.P-4 proved by Dr. Prahlad Patel PW-5, as mentioned in para-4 (Supra) leave no room for any doubt that death of Meena Bai had occurred due to severe injuries on the head with corresponding fractures of the parietal bone, temporal bone and left occipital bone. The injuries were caused with such force that brain substance had protruded from all fracture sites. It is thus established beyond doubt that Meena Bai had died a homicidal death on 05-07-1998.

8. Sahas Ram PW-15 had lodged the F.I.R. at Police Station-Kasdol on 05-07-1998 vide Ex.P-13. He testified that Dauwa Ram PW-10, father of the appellant had informed him that his son Uttam Kumar, the present appellant herein had killed his daughter-in-law and on such information he had gone to the house of Dauwa Ram PW-10 and had seen Meena Bai lying dead in a pool of blood with the injuries on the head. He had also stated that upon asking Sulesan Bai PW-7 had also told him that the appellant had caused the death of Meena Bai. The testimony of Sahas Ram PW-15 that Duawa Ram informed him as above finds corroboration from the F.I.R. Ex.P-13 and merg intimation Ex.P-14 lodged by him on the date of occurrence. The defence has been unable to impeach the credibility of this witness in cross-examination. This witness bears no grudge against the appellant and has no reason to falsely implicate him. In our considered opinion, this part of the testimony of Sahas Ram PW-15

that Dauwa Ram PW-10 had informed him that his son Uttam Kumar had caused the death of his daughter-in-law is fully trustworthy.

9. Dauwa Ram PW-10 has also deposed that a *Baithka* had taken place in which he had stated that his son did not go along well with his daughter-in-law. He also admitted that wife of the appellant had given birth to a child after she was driven out of his house and was residing in her maternal home. Guha Ram PW-8 has also corroborated the fact that after being driven out from her matrimonial home, she was residing in her maternal home for about a year. This part of the testimony is wholly unrebutted in cross-examination and shows the motive of the appellant to cause the death of Meena Bai.

10. Sulesan Bai PW-7 has deposed that while she was cooking food on the date of occurrence, the accused-appellant said to her that he has committed murder and went on a cycle to the Police Station. Thereafter, she saw the deceased and fell unconscious. She has also admitted that Meena Bai was lying in a pool of blood with injuries on the head on the floor. Her testimony that the appellant had told her that he had committed murder and left for the Police Station on a cycle is wholly unrebutted in cross-examination. In cross examination, a tricky question was asked to this witness to which she replied that on the date of occurrence she had not met the appellant. No specific question was asked to show that the appellant was not present at the house before she saw the dead body of Meena Bai. The admission in cross examination that she did not meet the appellant on the date of occurrence therefore did not rebut her testimony in para-1. No other question was asked in cross examination. Her testimony that the appellant had told her that he had committed murder and went on a cycle to the Police Station and

she thereafter saw the dead body of Meena Bai lying in a pool of blood is thus wholly worthy of credence.

11. Derhin Bai PW-9, step mother of the appellant has narrated that while she was in the *Parchi* she saw Sulesan Bai crying and coming out of the house and further saw that Meena Bai was lying in a pool of blood. She also admitted that the appellant while saying that he had committed murder and was going to the Police Station had left the house on a cycle. Again the same solitary tricky question was asked to this witness that she did not meet the appellant on the date of occurrence. It was also asked that at the time when the appellant went on a cycle, she did not talk to the appellant. The above answers do not rebut the testimony of this witness in any manner because she has narrated that it was the appellant who while saying that he had committed murder and was going to Police Station had left the house. The mere admission in cross examination that she did not speak to the appellant does not rebut her testimony in any manner. She is the step mother of the appellant and had no reason whatsoever to falsely implicate her son.

12. In his testimony Dauwa Ram PW-10 stated that on reaching the house he saw a crowd near the house and also saw Sulesan Bai & Derhin Bai crying and Derhin Bai informed him that the appellant had caused the death of Meena Bai. No specific question was asked in cross examination to this witness that Derhin Bai had not narrated the above fact to him or not.

13. Achche Kumar PW-16 is the witness who stated that on hearing shouts in the afternoon he saw Sulesan Bai standing in the Badi. On his asking she told that the appellant was assaulting his

wife. Soon thereafter he saw the appellant holding an axe. Thereafter, his aunt Derhin Bai asked him to call someone since there was a pool of blood on the place where Meena Bai was lying dead. Nothing has been elicited in cross examination which would indicate that this witness bears any grudge against the appellant or had any motive to falsely implicate him. It is true that in his case diary statement Ex.D-1 he did not state having seen the appellant with an axe near the place of occurrence but so far as the fact that Suleson Bai had informed him that the appellant had caused the death of Meena Bai and ran away finds place in his statement Ex.D-1 also.

14. Sub Inspector Ratnesh Mishra PW-20 has proved the fact of recovery of an axe on the memorandum Ex.P-17 of the appellant vide seizure memo Ex.P-18. His testimony also established beyond doubt that Tangia was recovered at the instance of the appellant which had contained blood like stains. The report of Forensic Science Laboratory Ex.P-26 also establishes beyond doubt that presence of blood was confirmed on the Tangia seized from the appellant.

15. The case law cited by the learned counsel for the appellant does not help the appellant in any manner since the circumstantial evidence led by the prosecution leave no room for any doubt that the appellant was the author of the crime. Applying the test laid down by the Apex Court that in ***Ashish Batham Vs. State of Madhya Pradesh*** reported in **AIR-2002-Supreme Court-3206**, the evidence led by the prosecution satisfactorily meets the standard of proof required to establish the charge of murder against the appellant. So far as the case of ***Rajkumar Vs. State of Madhya Pradesh*** reported in 2004 **AIR S.C.W. -5137** cited by the learned counsel

for the appellant, the facts are clearly distinguishable since in the present case the evidence led by the prosecution establishes the presence of the appellant on the scene of the crime immediately after the occurrence.

16. Having thus considered the evidence led by the prosecution in its entirety, the following facts are established:-

(A) The appellant had motive to commit murder of Meena Bai since their relationship was strained and he doubted the character of Meena Bai.

B) Death of Meena Bai was homicidal in nature and caused due to severe incised injuries with fractures underneath ~~on~~ the skull.

(C) The testimony of Sulesan Bai PW-7 & Derhin Bai PW-9 establishes that the appellant had, immediately after the occurrence, left for the police station on a cycle while stating that he had committed murder. The testimony of these witnesses finds corroboration from the prompt F.I.R. lodged by Sahas Ram PW-15 vide Ex.P-13, merg intimation Ex.P-14 and also the testimony of Sahas Ram PW-15 and Achche Kumar PW-16.

(D) The recovery of an axe on the memorandum of the appellant on the very next day after the occurrence and presence of blood thereon is also established.

17. In view of the abovementioned facts, we are of the considered opinion that the prosecution has proved beyond the shadow of doubt that the appellant was the author of the crime of murder of Meena

Bai. Therefore, the conviction of the appellant under Section 302 of the IPC and the sentence awarded thereunder by the learned trial Judge being well founded do not call for any interference in this appeal.

18. In the result, this appeal being devoid of merit fails and is hereby dismissed.

Sd/-
Dhirendra Mishra
Judge

Sd/-
Dilip Raosaheb
Deshmukh
Judge